

Corporate Policy Committee

Date of Meeting:	1 December 2022
Report Title:	High Speed Rail 2 Phase 2b – Qualifying Authority and Schedule 17 Decision-Making
Report of:	Jayne Traverse, Executive Director of Place
Ward(s) Affected:	All Wards

1. Purpose of Report

- 1.1.** This report seeks to consult the Corporate Policy Committee prior to a decision being made by Full Council which seeks for the Council to become a Qualifying Authority for the construction of phase 2b of the High Speed Rail 2 (HS2) by authorising the Executive Director of Place to approve the decision-making procedure for associated Schedule 17 applications.

2. Executive Summary

- 2.1** The enactment of the High Speed Rail (Crewe - Manchester) Bill (“the Bill”) will give deemed planning permission to the scheme which is similar to the grant of outline planning permission under the existing Town and Country Planning Act. There will be additional detailed designs and other construction works however which will be subject to applications for approval by the Local Planning Authority.
- 2.2** The Bill provides for the Council to become a ‘qualifying authority’ which would then allow the Council to assess and determine such applications subject to certain restrictions on the grounds for refusal as set out in the Bill. However, if the Council decide not to become a qualifying authority, the grounds for refusing any applications are more restricted than those available to qualifying authorities.
- 2.3** The Council should retain as many decision making powers as possible in the assessment and determination of all HS2 related applications in order to

ensure that the Council achieve the best and most appropriate outcomes for the local community and minimise the impacts on the wider environment as far as possible.

- 2.5** The Council became a Qualifying Authority for HS2 Phase 2a (West Midlands – Crewe) in 2019 and adopted a similar decision making process in October 2020.
- 2.4** The Bill requires the Secretary of State to specify which planning authorities have entered into a Planning Memorandum to become a qualifying authority by the time the Bill is reported on by the House of Lords. Although this may be some time off, it is appropriate for the Council to confirm their decision to HS2 Ltd as soon as possible.
- 2.5** In addition, it is intended to seek approval to reciprocate the current decision-making arrangements for Phase 2a to ensure that appropriate officer delegated authority and where necessary Planning Committee procedures are in place to deal with applications submitted in relation to works along the route of Phase 2b.

3. Recommendation

- 3.1.** To note the report and Annex 1 and provide commentary and feedback to Council.

4. Reasons for Recommendations

- 4.1.** The proposed approach will enable the Council to have greater control over the approval of construction details associated with the High Speed Rail scheme such as the detailed design of permanent structures and an enhanced role in relation to certain enforcement and construction matters. This is essential so that the Council can (acting reasonably and where necessary) seek to either improve or control the detailed design applications. Equally, the greater number of conditions that the Council can consider as Qualifying Authority is considered vital in helping to control and manage the impacts of construction and the scheme on the Borough.
- 4.2.** This is necessary to ensure that the impacts of the developments on the local environment and local amenity are fully considered and addressed in line with the approach of the Cheshire East Council Local Plan Strategy.
- 4.3.** The process of becoming a Qualifying Authority binds local authorities to act in a particular way through the signing of the Planning Memorandum in respect of determining applications for consent in an expedient manner (within eight weeks in line with statutory determination periods for planning applications), and to being sufficiently resourced to be able to do so. As such, this is being adjudged by all parties involved in the High Speed Rail 2 (Phase 2b) that the decision should be made by Full Council.

- 4.4.** The recommended approach would allow the Council to ensure appropriate officer delegated authority and where necessary Planning Committee procedures are in place to enable officers to deal with applications submitted in relation to works along the route in a timely manner and meet the timescales set out in the Planning Memorandum.
- 4.5.** The decision to become a Qualifying Authority and changes to the Constitution rests with Council but given the changes to the terms of reference to committee it is appropriate to consult Strategic Planning Board.

5. Other Options Considered

- 5.1.** The only alternative option is to become a Non-Qualifying Authority. This would mean that the Council would have a much more restricted role in the approval of construction matters and would only be permitted to consider plans and specifications for buildings. This option therefore provides a narrower degree of control over the impact that the construction of the scheme will have on the local environment and local amenity.
- 5.2.** Without a change in the Constitution as detailed in Annex 1, there is a risk that the Council would be unable to determine Schedule 17 Applications in a timely manner. As a result of this, the Council would lose its Qualifying Authority status and its determination powers; and the Secretary of State would take all decisions on Schedule 17 Applications.

6. Background

- 6.1.** In January this year, the Government introduced a hybrid Bill to Parliament to seek powers for the construction and operation of Phase 2b of HS2. The Bill will grant planning permission for the construction of a high speed railway between Crewe and Manchester all associated development works.
- 6.2.** The Bill grants what is termed as 'deemed' planning permission, which is similar to an outline planning consent, for development authorised by the Bill. However, this "planning permission" will be subject to a number of conditions requiring the nominated undertaker (the party/parties who will construct the railway) to obtain the consent or approval of the Local Authorities along the route for certain matters.

Qualifying Authority

- 6.3.** The Bill gives each Local Authority a choice between having a wide or narrow range of controls over the detailed design of permanent structures such as stations and viaducts, and an enhanced role in relation to certain enforcement and construction matters. Those who opt for a wider range of controls are referred to as 'qualifying authorities'.

- 6.4.** A Qualifying Authority will have the responsibility for approving plans and specifications for works such as buildings and road vehicle parks, terracing, cuttings, embankments and other earthworks, fences, walls or other barriers, transformers, telecommunication masts, pedestrian access to the railway line, artificial lighting, waste, and spoil disposal and borrow pits. They will not have powers of approval for any works or features of a temporary nature, for anything underground, and for any tunnel or railway track bed.
- 6.5.** A qualifying authority can only refuse to approve (or impose conditions in respect of) the plans and specifications on two main sets of grounds:
- a) The design or external appearance of the building works ought to be modified to:
- preserve the local environment or local amenity;
 - prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area;
 - preserve a site of archaeological or historic interest or nature conservation value, and is reasonably capable of being so modified;
- or
- b) The development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.
- 6.6.** Non qualifying authorities will only be able to refuse approval if the design or external appearance of the works ought to be modified to preserve the local environment/local amenity (and is reasonably capable of being so modified) or the development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.
- 6.7.** In addition, qualifying authorities will be able to enforce construction arrangements relating to:
- handling of re-useable spoil or topsoil
 - road transport
 - storage sites for construction materials, spoil or topsoil
 - construction camps
 - works screening
 - artificial lighting
 - dust suppression
 - road mud control measures.
- 6.8.** These may be subject to a class approval by the Secretary of State, in which case the relevant qualifying authority would be consulted before such approvals are made. Should the Secretary of State not make a class

approval, these arrangements are subject to approval by the relevant qualifying authority.

- 6.9.** Construction arrangements relating to construction camps, and lorry routes with more than 24 lorry movements per day would also require individual approval from the relevant qualifying planning authority; along with the bringing into use of any scheduled work or depot.
- 6.10.** Councils wishing to become Qualifying Authorities are required to sign the “Planning Memorandum”. This document sets out rules of conduct and administrative arrangements for both the Local Planning Authorities and the nominated undertaker.
- 6.11.** It requires the Council to commit to dealing with applications for consent in an expedient manner (within eight weeks in line with statutory determination periods for planning applications), and to being sufficiently resourced to be able to do so.
- 6.12.** Becoming a Qualifying Authority therefore involves a commitment by the Council to deal with applications appropriately and within specified timescales, in return for control over a wider range of matters than it would otherwise have.
- 6.13.** This commitment has resource implications: the Council will receive application fees to cover the costs associated with dealing with these consents and approvals, or HS2 Ltd. will provide a financial contribution to the Council to deal with the additional workload. This contribution would come through a Service Level Agreement (SLA) between the Council and HS2 Ltd to cover the costs of handling the applications and any additional work required to support their determination. The Council will engage with HS2 Ltd. to obtain the number of applications and exact timetable as necessary to determine the extent of resources required and implications on the service – as they have been doing for Phase 2a.

Process for Decision-Making

- 6.14.** In order to meet the above timeframes as a Qualifying Authority a process for decision making has already been established for HS2 Phase 2a applications. This was however specific to just Phase 2a so a similar process is required for Phase 2b.
- 6.15.** The applications are likely to be for relatively minor works in the initial phases but could become substantial in number and frequency as works evolve in the future. As such in view of these points, and the need to ensure that the applications are dealt with within the set timescales, there is a risk that the anticipated volume of work could have a significant impact upon the capacity

of the Planning Committee to consider these additional items within the required period.

- 6.16.** For these reasons, a cascaded delegated authority is sought to allow the Head of Planning to determine approvals under Schedule 17 (the Planning Conditions Schedule) of the Bill.
- 6.17.** The approach to Committee reporting would broadly reflect that of the existing process for determining planning applications, allowing Members the opportunity to 'call-in' such approvals – subject to specifying relevant planning reasons and following agreement with the Head of Planning in liaison with a Principal Planning Officer.
- 6.18.** Schedule 17 Applications would be determined as follows:
- Delegated Authority to the Head of Planning to determine all applications and notifications submitted in relation to HS2 matters in consultation with the Principal Planning Officer; subject to the provisions below.
 - All live applications, including Member call-in's, to be reviewed fortnightly and considered for Planning Committee determination by the Head of Planning and Principal Planning Officer. Both officers to jointly determine whether a delegated or committee determination is appropriate (and if a committee determination is necessary, the specific planning committee) based on the scale, complexity and level of public scrutiny of each application.
 - In line with the existing procedures for Members, any request for call-in by the relevant Local Ward Member must be received within 15 days of the issue of the electronic notification of the application; and must set out the material planning consideration(s) specific and relevant to the matters which can be considered under Schedule 17 which warrant the application going before Planning Committee.
 - The scheme of delegation shall be subject to a review after 6 months in consultation with the Head of Planning and the Chairs of Planning Committees to ascertain whether any changes are necessary to the scheme of delegation as lessons are learned throughout its application.
- 6.19.** The type of applications which would be referred to planning committee for determination would likely be of a scale and nature that present more significant impacts to the local environment and amenity; or present complex planning and environmental considerations which requires appropriate scrutiny by Members. Examples of such applications could include:
- Development of large-scale bridges and viaducts;
 - Significant ground engineering works;

- Creation of borrow pits;
- Buildings which are of a scale and nature which may create impacts beyond the immediate locality.

Other procedural arrangements – consultation and notification

- 6.20.** Under the HS2 Bill, there is no statutory requirement for the Council to carry out any consultation on Schedule 17 applications with any other parties other than key statutory bodies (Natural England, English Heritage and the Environment Agency) and no requirement to inform the public on receipt of such submissions.
- 6.21.** In view of the restrictions the HS2 Bill places on the Council in terms of timescales for determination and the matters that can be taken into consideration, the Council would not carry out any formal consultation with local residents and Parish Councils on Schedule 17 submissions.
- 6.22.** The Council however recognises that there may be high levels of interest in any HS2 related developments. In order to ensure local people and Members are therefore kept up to date and made aware of all applications, and in order to reflect the existing procedures for all planning applications, the Council would as a minimum undertake the following:
- Write to inform the affected Parish Councils on the route of the receipt of a Schedule 17 application;
 - Write to inform all neighbours immediately adjoining the relevant part of the route;
 - Notify Local Ward Members of all Schedule 17 Applications;
 - Provide Local Ward Members with the opportunity to request that the application be ‘called-in’ for a committee determination – subject to specifying relevant planning reasons and following agreement with the Head of Planning in liaison with a Principal Planning Officer;
 - Make full details of all Schedule 17 submissions (including plans and supporting documents) available to view on the Council’s website. The purpose of this process is to keep the public informed, but the Council will not be requesting comments.

Amendment to Council Constitution

- 6.23.** The proposed amendments to the scheme of delegation as outlined above will require an amendment to the Council Constitution.
- 6.24.** The Council Constitution already has the appropriate Scheme of Delegation in relation to the extent of powers delegated to Executive Director of Place. This was put in place prior to HS2 Phase 2a. These powers are delegated further through Local Schemes of Delegation to the Head of Planning.

- 6.25.** The Council Constitution however also details the current terms of reference for Northern and Southern Planning Committee, and Strategic Planning Board. This is detailed in Annex 1 to this report along with the proposed amendments sought.
- 6.26.** It is recommended that Members approve the proposed amendments to the Council Constitution in order to ensure appropriate delegated authority and Planning Committee procedures are in place to deal with requests for approval of detailed design and external appearance of buildings and structures along the route of Phase 2b of HS2.

7. Consultation and Engagement

- 7.1.** Strategic Planning Board and Corporate Policy Committee are being consulted and their views will be updated to Council.

8. Implications

8.1. Legal

- 8.1.1.** Councils wishing to become Qualifying Authorities are required to sign the “Planning Memorandum”.
- 8.1.2.** The Planning Memorandum sets out rules of conduct and administrative arrangements for both the local planning authorities and the nominated undertaker of the works. It is part of a suite of documents forming the Phase2b of HS2 Environmental Minimum Requirements.
- 8.1.3.** The Planning Memorandum regulates the details of the deemed planning consent that are reserved for local planning authority approval. It sets out the undertakings made by Qualifying Authorities in return for the additional planning controls referred to above.
- 8.1.4.** Signing the Planning Memorandum and becoming a Qualifying Authority:
- Is legally binding;
 - Gives CEC a greater degree of control over planning conditions;
 - Does not fetter CEC’s discretion to withhold approval of planning conditions but stipulates certain expectations as to the stringency of conditions
- 8.1.5.** CEC’s status as a Qualifying Authority can be withdrawn in certain circumstances.
- 8.1.6.** It provides for the establishment of a Planning Forum which will meet regularly to assist with the effective implementation of the planning provisions in the Bill in order to help co-ordinate and secure the expeditious implementation of those planning provisions.

- 8.1.7.** Due to the national importance of the HS2 infrastructure project Qualifying Authorities are required to have regard to construction, cost and programme implications.
- 8.1.8.** The Planning Memorandum does not fetter CEC's ability to refuse a request for approval of conditions but requires that CEC shall not seek to impose any unreasonably stringent requirements on the requests for approval of any construction arrangement, plans or specifications, mitigation scheme or site restoration scheme, which might frustrate or delay the project, or unreasonably add to its cost. In particular, it should not seek to impose unreasonably stringent requirements or standards in respects of land use, planning, design or environmental matters.
- 8.1.9.** Due to the time pressures on the project, CEC will be expected to put in place appropriate internal decision-making arrangements to ensure that the 8 week period for determining requests is achieved. A delegated process is already in place for HS2 Phase 2a, this provides for delegation to the Head of Planning in consultation with the Chair of Strategic Planning Board. A similar process should be put in place which will require a change to the Terms of Reference for Committees within the Constitution as indicated within Annex 1.
- 8.1.10.** If CEC repeatedly fails to expedite requests for approval, or seriously fails to expedite a request in line with the stipulated timescale, or repeatedly or seriously fails to act in accordance with all the requirements of the Planning Memorandum, the Secretary of State may have sufficient grounds to order that CEC shall cease to have the additional powers of a Qualifying Authority. Prior to being disqualified, the nominated undertaker and the Secretary of State would discuss with CEC concerns regarding its performance and the performance of the nominated undertaker.
- 8.1.11.** Where CEC refuses a request for approval, in addition to specifying the grounds under the Planning Conditions Schedule for its decision, it shall state clearly and precisely the full reasons for its decision.
- 8.1.12.** The Planning Memorandum does not relate to applications for permission to construct over-site development - namely certain non-rail-related development over operational structures such as stations and vent shafts. These will be taken forward under the normal planning process.
- 8.1.13.** Finally, it should be noted that any applications for permission are unrelated to any assurances obtained through the petitioning process. These assurances are dealt with separately as there is a contractual obligation to comply with all relevant assurances made by HS2. A unilateral written commitment is made to Parliament and an undertaking is

also given that HS2 will take the necessary steps to secure compliance with any assurances made.

8.2. Finance

- 8.2.1.** Given that signing the Planning Memorandum gives the Local Planning Authority a greater range of controls, this will require more resources to process and deal with applications compared to if the Council chose to become a non-qualifying authority. However, the Service Level Agreement (SLA) between the Council and HS2 Ltd is intended to cover all costs associated with processing Schedule 17 applications and therefore there should not be any negative cost implications to the Council from becoming a qualifying authority. Any costs will be accounted for within the Council's Development Management budget.

8.3. Policy

- 8.3.1.** HS2 is supported in the Cheshire East Local Plan Strategy under Strategic Priority One which states that promoting economic prosperity by creating conditions for business growth will be delivered by (amongst other things) maximising the opportunities that may be offered by High Speed 2 Rail Links (HS2).

8.4. Equality

- 8.4.1.** All public sector authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. In exercising their powers authorities must have regard to the effect of any differential impacts on groups with protected characteristics. In deciding to become a qualifying authority the Council must pay due regard to its Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010.
- 8.4.2.** The enhanced controls provided for in becoming a qualifying authority should have a positive public benefit when it comes to the PSED

8.5. Human Resources

- 8.5.1.** It shall be necessary to ensure that sufficient resource is allocated in Planning, Highways, and Legal Services to support determination of the applications within the timescales required

8.6. Risk Management

- 8.6.1.** Key risks to the Council relate to ability of officers to determine the applications within the required statutory timescales and staff resource implications associated with the additional workload.

8.6.2. This will be managed through the use of the SLA between the Council and HS2 Ltd to secure additional finance to ensure sufficient resources to manage the process effectively. Early engagement with HS2 Ltd has already taken place about the likely timing and number of future applications which will also enable staff resource to be managed well in advance of any increased workload. This engagement will continue with early pre-application discussions.

8.7. Rural Communities

8.7.1. The route of the scheme passes through a number of rural communities which are likely to be subject to applications for the approval of detailed designs or other associated developments. Each application for approval would enable an assessment of the relevant environment effects for those matters that the Council is able to control under the Bill.

8.8. Children and Young People/Cared for Children

8.8.1. There are no direct implications for children and young people.

8.9. Public Health

8.9.1. There are no direct implications for public health

8.10. Climate Change

8.10.1. There are no direct implications for climate change.

Access to Information	
Contact Officer:	David Malcolm, Head of Planning david.malcolm@cheshireeast.gov.uk 07788 415246
Appendices	1. Proposed change to Constitution
Background Papers: Section 3 of HS2 Phase 2b Information Paper B2: Main Provisions of the Planning Regime and the Phase 2b Planning Memorandum explain this in more detail: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1048798/B2_Main_provisions_of_the_planning_regime_v1.pdf https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1050458/M345.pdf	